196.

SUPREME COURT OF THE UNITED STATES.

No. 126.

DANIEL S. HICKOK AND GEORGE GASSAWAY, *OWNER* OF THE STEAMBOAT NEW WORLD, LIB'TS AND APP'TS,

vs.

JAMES STEWART, JONATHAN HILLMAN, EDGAR M. BROWN, WM. LAYTON, AND JOHN C. BAYLOR, CLAIM'TS OF THE BRIG CROTON.

APPEAL FROM THE CIRCUIT COURT U. S. FOR THE SOUTHERN DIST. OF ALABAMA.

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Pleas had before the hon. the district court of the United States for the southern district of Alabama, at a term thereof begun and held in and for said district, at Mobile, on the first Monday of May, in the year of our Lord one thousand eight hundred and forty-six. Present, his honor, William Crawford, judge of said court.

Be it remembered, that heretofore, to wit, on the fourth day of April, in the year of our Lord one thousand eight hundred and forty-six, Daniel S. Hickok and George Gazzaway filed in said court their libel and complaint against the brig or vessel called the Croton, in the words and figures, to wit:

Libel.

DISTRICT COURT OF THE UNITED STATES,
For the Southern District of Alabama.

To the honorable Wm. Crawford, judge of the district court of the United States for the southern district of Alabama:

The libel and complaint of Daniel S. Hickok and George Gazzaway, owners of the steamboat New World, against the brig Croton, of which David V. Soulard is master, her tackle, apparel, and furniture, and against all persons lawfully intervening for their interest therein, in a cause of collision, civil and maritime. And the said libellants allege and articulately propound as follows: That in the month of March, 1846, the steamboat New World, a duly registered steamboat of the U. S., was engaged in a voyage from the port of Mobile, in the district aforesaid, to New Orleans, in the State of Louisiana, and was at the time a tight, staunch, well-provided vessel, well conditioned, and with full complement of hands to navigate the same; that in the month aforesaid the said steamboat in the said condition commenced her voyage aforesaid, and in the prosecution of the same arrived in the Mobile bay on or about day of March aforesaid, within the ebb and flow of the tide, and within the admiralty and maritime jurisdiction of this court.

3d. The libellants further allege, that the said steamboat was proceeding on her voyage aforesaid, in her ordinary and accustomed course, and at the usual rate, when the said brig Croton, of which the said Soulard is master, of the burden of tons and upwards, was observed to approach the said steamboat in the opposite direction.

4th. The libellants allege that the said vessel, at the time when she first appeared to the master and men of the said steamboat, was about one hundred yards distant, and was standing upon a course which, if it had been continued, would have enabled her to pass the said steamboat without any collision and damage.

5th. That the officers of the said steamboat, observing the said brig with the view of still further removing her from the course of the said vessel, moved the helm for that purpose, and the said steamboat, by that precaution, was still further removed from the course of said vessel. The libellants further allege, that no precautions were taken by the officers of the Croton; that, on the contrary, she was removed from the course in which she was standing by the act of the officers, and brought directly in and upon the steamboat aforesaid.

6th. The libellants further say, that there was ample room for both of said vessels to pass without any danger of a collision. That the collision was produced by the acts of the master and mariners of the said vessel, who changed the course of the vessel so as to bring her athwart the New World, and without the active effort of the said mariners no such collision would have taken place.

7th. The libellants further allege, that by the collision aforesaid the steamboat has sustained damage to the amount of two thousand five hundred dollars. That her wheel-house and cabins have been carried away, and other serious damage done to the same, and the said vessel has been obstructed in the performance of her voyage aforesaid. That the owners of the New World aforesaid have used all due and entire diligence for the repairs of the said boat, and to get ready for the said voyage, but the necessary delays for repair have hitherto prevented them, and that, from this cause, they have sustained a further damage of one thousand dollars. That all and singular the premises are true, and within the admiralty and maritime jurisdiction of this honorable court, and, if denied, the libellants pray that they may be allowed to produce depositions to prove the same.

Therefore the libellants pray that process, in due form of law, according to the course of courts of admiralty and of this honorable court, against the brig Croton, her tackle, apparel, and furniture, and that all persons having or pretending to have any right, title, or interest therein may be cited to appear and answer, upon oath, all and singular the matters so articulately propounded; and that this honorable court would be pleased to pronounce for the damages aforesaid, and to decree such other relief as shall to law and justice appertain; also to condemn the said brig, her tackle, apparel, and furniture, and all persons intervening for their interest therein in costs.

D. S. HICKOK.

CAMPBELL & CHANDLER,
For Pl'ffs.

Sworn to and subscribed before me, March 30th, 1846.

JOHN FITTS,
Clerk.

We acknowledge ourselves to be held and firm bound to John Fitts, clerk of the district court aforesaid, for all the costs and damages that may be awarded against the libellants for the wrongful or vexatious issual of the libel.

Witness our hands and seals, this 30th March, 1846.

D. S. HICKOK, [SEAL.]
GEO. GASSAWAY, [SEAL.]
WM. STEWART, [SEAL.]

Filed April 4th, 1846.

JOHN FITTS, *Clerk.*

And afterwards, to wit, on the eleventh day of April, in the year of our Lord one thousand eight hundred and forty-six, the following writ of seizure was issued from the office of the clerk of said court, to wit:

Writ of seizure.

UNITED STATES OF AMERICA,
District Court of the United States,
for the Southern District of Alabama.

The President of the United States, to the marshal of said district, greeting:

You are hereby commanded that you attach, seize, take, and safely keep the brig or vessel called the Croton, her tackle, apparel, and furniture, whereof Soulard is master, and now lying in the port of Mobile, so that you have said brig, her tackle, apparel, and furniture, before the judge of the district court of the United States, at a term of said court to be held in and for the said southern district of Alabama, at Mobile, on the first Monday of May next, to answer the libel of Daniel S. Hickok and George Gassaway. Herein fail not, and have you then and there this writ.

Witness the Hon. Wm. Crawford, judge of the court aforesaid, this second Monday of December, 1845. Issued the eleventh day of April, 1846.

Attest: JOHN FITTS,
Cl'k So. Dist. Ala.

Marshal's return.

Received April 11th, 1846, and executed the same day, by taking into my custody the brig Croton, her tackle, apparel, and furniture.

JAMES G. LYON,
U. S. Marshal.
By A. H. JANNETT,
D. M.

And afterwards, to wit, on the eleventh day of April, in the year of our Lord one thousand eight hundred and forty-six, the following monition was issued from the office of the clerk of said court, to wit:

Monition.

UNITED STATES OF AMERICA,
District Court of the United States
for the Southern District of Alabama.

The President of the United States, to the marshal of said district, greeting:

Whereas Daniel S. Hickok and George Gassaway have exhibited their libel in the court aforesaid, stating that the brig or vessel called the Croton, while performing voyages on the high seas within the ebb and flow of the tide, and of the admiralty and maritime jurisdiction of this honorable court, to wit, in the bay of Mobile, became indebted to said libellants, for damages caused by a collision with the steamboat New World, whereof the said libellants are owners, in the sum of three thousand five hundred dollars; and whereas the judge of the court aforesaid has ordered the first Monday of May next for all persons concerned to be cited to appear at the place of holding said court, at the city of Mobile, and show cause, if any they have, why judgment should not pass as prayed—you are therefore hereby commanded to cite and admonish all persons having any right, title, or claim in or to said brig Croton, her tackle, apparel, and furniture, by publicly affixing (showing) this monition on the foremast of said brig for some time, and by leaving with the master of said brig a true copy thereof, to be and appear at the time and place aforesaid, at the court aforesaid, and also to attend upon every session to be held there and from thence, until a definite sentence shall be promulgated in said business inclusively, if any shall think it their duty so to do, to hear, abide by, and perform such judicial acts as are required to be done in the premises, and further to do what unto law and justice shall appertain; and whatsoever you shall do in the premises, certify unto the court aforesaid at the time and place aforesaid, together with these presents.

Witness the Hon. Wm. Crawford, judge of the district court aforesaid, this second Monday of December, 1845, in the year of our Lord. Issued the eleventh day of April, 1846.

Attest: JOHN FITTS,
Cl'k So. Dist. Ala.

Marshal's return.

Received April 11th, 1846, and executed same day by affixing a

copy of this monition upon the foremast of said brig, and by advertising the same in the Mobile Register and Journal for fourteen d'ys.

JAS. G. LYON,
U. S. Marshal.
By A. H. JANNTT,
D. M.

And afterwards, to wit, on the sixth day of May, in the year of our Lord one thousand eight hundred and forty-six, James G. Whitaker and Daniel C. Sampson filed in said court their claim and answer, in the words and figures following, to wit:

Claim and answer.

UNITED STATES OF AMERICA,
Southern District of Alabama.

And now come James G. Whitaker and Daniel C. Sampson, merchants and co-partners in trade, doing business in the city of Mobile, under the firm and style of Whitaker & Sampson, and claim said vessel, her tackle, apparel, and furniture, on behalf of James Stewart, of Williamsburg, Long Island, and of Jonathan Hillman, Edgar M. Brown, William Layton, and John C. Bayles, of New York city, the owners of the same, and say that they, the said Whitaker & Sampson, are the consignees and agents of said vessel, and that the said owners reside out of this district, and out of the jurisdiction of this honorable court.

And for answer to the allegations of said libel, the claimants answer articulately as follows:—

First. That the respondents do not know whether the steamboat New World was duly registered, or in what trade she was engaged, or whether she was staunch, and with a full complement of men at the time alleged, and if deemed material, they pray for strict proof thereof.

Second. Respondents admit, that on the day of March, 1846, in Mobile bay, and within the ebb and flow of the tide, the brig Croton and the steamboat New World did come in collision, the said steamboat proceeding on her voyage.

Third. Respondents answer, that the said brig was standing on her proper course, in the ordinary and accustomed route of vessels entering Mobile bay, and with all the precautions usual and proper in entering a roadstead or harbor. That at 3 o'clock p. m. of said day (19 March) she crossed Mobile Point, and proceeded up the bay, steering north by the compass; at 7 p. m. had a light hung on the end of the jibboom; between 7 and 8 o'clock p. m. discovered a steamboat light directly ahead coming down the bay—all hands on board the brig being at the on the forecastle on the look out, the brig being before the wind with starboard studding sails set; was

kept away as much as possible to avoid the steamboat, and brought the light of the steamboat on her starboard bow. Continued steering in this direction for three or four minutes, and nothing could be seen of the steamboat but her light, but on a nearer approach to her, it was discovered that she had also changed her course more to the westward, and that if both vessels continued in the direction they were steering a collision was inevitable. To avoid this if possible, they immediately luffed the brig. The steamboat did not change her course, but appeared to be attempting to cross their hawse. Every effort to avoid the steamboat was made, but without success, and a collision ensued, in which the bowsprit, jibboom, head, cut-water, and all the rigging connected with the bowsprit were carried away, the stem started, all the head sails badly split, and the brig received other damages causing her to leak very badly.

Fourth. That the brig did change her course, in the hope and expectation of avoiding the steamboat, and would have done so, but the steamboat also changed her course, by which she was brought in collision.

Fifth. That by the change in direction on the part of the steamboat the collision occurred, whereas, if she held her course, or stood a contrary direction, it would have been avoided; that the change in direction on the brig was the only one which the wind would allow, but the steamboat, being propelled independent of the wind, could have changed her course in any other direction at pleasure. Respondents deny that the collision occurred by any want of skill or precaution on the part of those in charge of the brig, but that the collision did in fact occur from the darkness of the night, and either by unavoidable accident or the gross carelessness of those in charge of the steamboat.

Sixth. Respondents emphatically deny that the collision occurred from the negligence, wilfulness, or want of proper skill of those in charge of the brig, but, on the contrary, say that every precaution, such as hoisting lights, keeping proper watches, &c., were used, and so far as the brig was concerned the collision was unavoidable. That the brig had a full complement of skilful and careful mariners.

Seventh. Respondents do not know what damage the steamboat sustained, and, if material, pray for proof *if* each and every item. And now, by protestation, the respondents say, that the libellants ought not to have or maintain their libel aforesaid, because they say said libellants are not the owners of said steamboat, but that she belongs to one William Stewart and one Joseph Bryan, which, if material, the respondents are ready to verify. Respondents, further answering, say that all and singular the matters of this answer are true, and crave leave to refer to depositions and other proofs, to be taken under the orders of this court in verification thereof. Wherefore, they pray the term probations as in the course

of admiralty—proceedings as accustomed, and that the final hearing, the said brig, her tackle, apparel, and furniture, and the respondents may be herein dismissed with costs.

A. F. HOPKINS.

LINDSEY & FOX,
Proctors for Respondents.

Filed May 6th, 1846.

JOHN FITTS,
Clerk.

Stipulation.

UNITED STATES OF AMERICA,
District Court of the United States
for the Southern District of Alabama.

Know all men by these presents, that we, James G. Whiteker, Daniel C. Sampson, and David V. Soulard, are held and firmly bound unto Daniel S. Hickok and George Gassaway, in the just and full sum of seven thousand dollars, for the payment of which, well and truly to be made, we and each of us bind ourselves and each of our heirs, executors, administrators, and assigns jointly and severally firmly by these presents. Sealed with our seals, and dated this fifth day of May, in the year of our Lord one thonsand eight hundred and forty-six. The condition of the above obligation is such that whereas the said David S. Hickok and George Gassaway have exhibited their libel in the court aforesaid, setting forth and alleging that the brig or vessel called the Croton, *which* performing voyages on the waters of the sea within the jurisdiction of the said court, became indebted to said libellants in the sum of three thousand five hundred dollars; and whereas the said brig Croton, her tackle, apparel, and furniture, have been attached and are now in custody, &c., to answer said libel; and whereas it has been ordered that the said brig Croton, her tackle, apparel, and furniture, be restored to her master or owners on their giving bond with good security in double the amount of the claim of said libellants, to have the said brig Croton, her tackle, apparel, and furniture, forthcoming to abide the decree of this honorable court. Now, therefore, the condition of the obligation is such, that if the above bound, James G. Whiteker, Daniel C. Sampson, and D. V. Soulard, or either of them, shall have the said brig Croton forthcoming to abide the decree of this honorable court. Now, therefore, the condition of the obligation is such, that if the above bound James G. Whitaker, Daniel C. Sampson, and D. V. Soulard, or either of them, shall have the said brig Croton, her tackle, apparel, and furniture, in her and their present condition, before the district court aforesaid, and forthcoming to abide by and answer such decree as the said district

court may make touching the premises, and shall abide by and perform such decree or judgment as his honor may at any time pronounce in the premises, and shall well and truly pay unto the said Daniel S. Hickok and George Gassaway all such sum or sums of money as the said district court shall or may at any time decree unto them in the premises, together with all costs and damages, then this obligation to be void; otherwise to remain in full force and effect.

JAMES G. WHITAKER, [L. S.]
DANIEL C SAMPSON, [L. S.]
D. V. SOULARD, [L. S.]

Signed, sealed, and delivered in presence of—
JAS. H. WYLIE,
ALEX. EVERETT,
Witness to the signature of D. V. Soulard.

Filed June 18th, 1846.

JOHN FITTS,
Clerk.

Affidavit.

And afterwards, to wit, on the first day of July, in the year of our Lord one thousand eight hundred and fifty-six, the said respondents filed in the said court the following affidavit, to wit:

UNITED STATES OF AMERICA,
Southern District.

Personally appeared before me, John Fitts, clerk of the district court of the United States for the southern district of Alabama, David V. Soulard, who saith, on oath, that Augustus Schenk, Samuel Ruse, and William Holmes are material witnesses for the claimants in a cause pending in said court, wherein Hickok and Gassaway are libellants, and the brig Croton, of which the affiant and others are claimants, are defendants; and he further saith, that said witnesses are about to leave said district and the United States, so that he will not have the benefit of their personal attendance at the trial of said cause, therefore he prays commission, &c.

D. V. SOULARD.

Subscribed and sworn to before me, this 1st July, 1846.
JOHN FITTS,
Clerk.

Filed July 1st, 1846.

JOHN FITTS, *Clerk.*

Commission.

UNITED STATES OF AMERICA,

District Court of the United States for the Southern District of Alabama.

DANIEL S. HICKOK et al.
vs.
BRIG CROTON.

To Alexander McKinstry, esq., greeting:

Know you that we, in confidence of your prudence and fidelity, have appointed you, and by these presents do give you full power and authority to examine Augustus Schenck, Samuel Rouse, and William Holmes as witnesses on behalf of the respondents in a certain cause now pending in our said court, in admiralty, wherein Daniel S. Hickok and George Gassaway are libellants and James G. Whitaker and Daniel C. Sampson are respondents. And therefore we command you, that on Friday, the third day of July instant, at 10 o'clock a. m., at your office, in the city of Mobile, you do cause the said Augustus Schnck, Samuel Ruse, and William Holmes to come before you, then and there to give evidence on the part of the respondents in the cause aforesaid, and that you render the same into writing, and return the same into our said court with all convenient speed.

Witness the Hon. William Crawford, judge of our said court, and the seal of said court, this first Monday of May, in the year of our Lord one thousand eight hundred and forty-six.

Issued 1st day of July, A. D. 1846.

Attest: JOHN FITTS, *Clerk.*

Depositions of A. Schneck, S. Ruse, Wm. Holmes.

The depositions of Augustus Schenck, Samuel Ruse, and William Holmes, witnesses, taken before me, Alexander McKinstry, in pursuance of the authority vested in me by the annexed commission issuing from the hon. the district court of the United States for the southern district of Alabama, to be used as evidence in a certain cause pending in said court, wherein Daniel S. Hickok and George Gassaway are libellants and James G. Whitaker and Daniel C. Sampson, stipulators of the brig Croton, which is defendant, the said witnesses having been examined on behalf of the respondents, and the said witnesses having been by me duly examined, cautioned, and sworn to testify the whole truth, did testify and depose as follows:

Deposition of Schenck.

Augustus Schenck deposes and says that this deponent was on

board of the brig Croton when the collision occurred between the said brig and the steamboat New World; that it was in the month of March, 1846; does not recollect the day of the month; that it was the evening; that in the fore part of the evening the captain ordered a light to be hung out on the jib-boom; that a light was hung out, and there was a good lookout; most all of the hands were in the forecastle of the said brig; that the steamboat was made on the starboard bow; that there was no way of avoiding the steamboat, as a collision occurred almost instantly after the light was discovered; the first thing this deponent knew the steamboat had come in collision with the brig; that this occurred between the hours of seven and eight o'clock in the evening; that it was dark and hazy; that the bow-sprit of the brig was carried away; the cut-water and stem was also carried away, tearing the sails of the brig, and carried away the larboard cat-head; after the steamboat had got clear of the brig, the brig let go her starboard anchor; that the steamboat dropped along on the larboard side, (drifted,) ringing her bell while drifting; that the steamboat Sea was coming up the bay and took the said steamboat in tow; that in the meantime the hands of the brig were furling the sails and trying the pumps; that it was found that the brig was making water; that the brig made a good deal of water, so that the pumps were kept going all the time to keep her free; that the crew consisted of six men before the mast, a boy, two mates, a steward and the captain; that this deponent was on the quarter-deck when he first saw the steamboat; that the whole ship's company were on the deck of the brig; that the wind was from the southward and eastward; that the brig had all of her sails set, with the top-mast's studding sails. Was there any change in the course of the brig between the time that the light was discovered and the time that the collision occurred? Question by A. Fox. That the helm was put a-port and there was a change in the course of the brig; that if there had not been a change in her course the steamboat would have struck the brig about abreast of the fore-rigging; that when we first saw the steamboat she was coming down on the starboard bow of the brig; does not know how far off she was; could not see her hull, but could see her light; she was close too and going fast. Question by Mr. Fox. Was there any change in the course of the steamboat from the time that you first saw her until the time of the collision? That the steamboat appeared to be running across the bows of the brig; that there was a change in the course of the steamboat; that the change was such that it brought the steamboat in contact with the brig; that he is a sea-faring man, and has been to sea all of the time since he was about thirteen years of age; that that he was never before as high up Mobile bay as at the time of the collision. Question by Mr. Fox. Do you think, as a nautical man, that the collision could have been avoided on the part of the brig? That from the situation of the vessels, and the occurrence taking place so quick, he

does not think that collision could have been avoided on the part of the brig; that this deponent was first mate on the brig at the time; that he had no interest in her; that he was on the quarter deck, by the side of the captain; that he was some distance from the helmsman, talking with the captain at the time; that the steamboat was not hailed before the collision; that deponent thinks that he heard the captain say, "helm a-port!" that the captain asked this deponent if the steamboat could be cleared; that the answer was that it could not, and that the command was then given of "helm a-port!" that there was no order to the helmsman before that; does not know how far off the steamboat was when first discovered; that the brig was headed up about north when the steamboat was discovered; that the wind was fair, and the brig did not need to be towed; that this deponent was on board of the brig when the marshal of this court came on board; that the marshal came on board in the evening between 9 and 10 o'clock; that the captain came on board of the brig the next morning; he came down in the New Orleans boat; that the captain told the marshal that he must either leave the brig at that place or he should put him ashore at Mobile Point; that the marshal left the brig in a pilot boat; that he does not recollect that the captain told the marshal that he would throw him overboard if he did not get out there at Mobile Point. Mr. Fox declines to cross-interrogate in relation to the matter of the marshal, and objects to its competency.

AUGUSTUS SCHENCK.

Deposition of Ruse.

Samuel Ruse deposes and says: That on the 20th of March, 1846, this deponent was on board of the brig Croton; that the brig had discharged her pilot at Mobile Point, and was proceeding up the bay; that the captain ordered a light to be hung at the jib-boom, and that a light was hung at the jib-boom end; that between seven and eight in the evening the hands of the brig discovered a steamboat coming down the bay; that all hands were on the forecastle except the man at the wheel; that the steamboat was steering right for the brig; that the steamboat was coming very fast; that the captain asked if the brig could clear her; as soon as he found that it could not be done he ordered the helm to be put a-port; that the next thing was, the steamboat was in collision with the brig, carrying away the bow-sprit, the jib-boom, the flying jib-boom, the cutwater and stem, and cut several of the head stays away; that the jib, the flying jib, and the fore-topmast stay-sail was split, the fore-top-gallant sail and fore-sail was also split, tearing away the larboard cat-head and anchor stock; that after the steamboat had run into the brig she swung around on the larboard side of the brig, and the brig let go her starboard anchor; that the brig's sails were then furled up, and in sounding the pumps it was found that the brig was leaking very bad; that all hands were put to the pumps

to free the brig; that the steamboat was on the larboard side of the brig, where she continued ringing the bell until a steamboat came along and took her in tow; that the brig sent about to the steamboat to know if she wanted any assistance; that the deponent went in the boat; that they on board of the steamboat gave no answer; that this deponent has been going to sea about fourteen years; does not think that the collision could have been avoided; that if the steamboat had not been coming too fast the putting of the helm a-port would have carried the brig to the windward of the steamboat; that if the helm had not been put a-port the steamboat would have cut the brig in two pieces near to the rigging; that if the two vessels had continued the same course that they were in when the steamboat was first discovered the steamboat would have struck the brig near her fore-rigging; that if the helm of the brig had been put to the starboard, the steamboat would have cut the stem of the brig off, striking it at about the after part of the main rigging; that he was second mate of said brig; that he was in the forecastle at the time; that all hands had been on deck all of the evening; that the weather was dark and thick, and could not see the steamboat until just as she struck; that she struck the brig in the bow on the starboard side.

SAMUEL RUSE.

Deposition of Holmes.

William Holmes deposes and says: That this affiant was on board of the brig Croton on the 20th March, 1846; that the said brig was on her way to the city of Mobile; in the bay the captain told the man at the wheel to keep the brig north by west; directly after giving this order the captain ordered the top-gallant studding sails to be set, which were set; that between sundown and dark the lantern was hung out on the jib-boom; that the captain then gave orders to keep a good lookout; shortly afterwards one of the men sung out "lights!" and the captain said "where away?" and the men then sang out, "about a half a point on the starboard bow;" the next thing that this deponent knew the steamboat was into the brig, striking the flying jib-boom, breaking that and the bowsprit; the next crack that she made the stem of the brig was torn out and the bow split open forward, the larboard cat-head knocked off, and the anchor stock broken off, cutting the head rigging of the brig, tearing the flying jib to pieces, and jib and staysail, and tore the foresail and fore-top-gallant-sail all to pieces; that when the brig lost her forward stay she came into the wind, when the starboard anchor was let go; the steamboat drifted along-side of the brig, and the captain of the brig ordered more chain to be given, to let the brig drop clear of the steamboat; the steamboat was brought on the starboard side of the brig; this deponent was steward on the said brig; that he did not hear the captain order the

helm to be put aport; he was on the forecastle; that he has followed the sea since he was a boy.

his
WILLIAM ⋊ HOLMES.
mark.

Witness: ALEX. MCKINSTRY.

Commissioner's certificate.

And I, Alexander McKinstry, do certify that I am not of counsel or attorney for either of the parties in the said suit, or in anywise interested therein; that the said Schenck, Ruse, and Holmes were by me duly and carefully cautioned, examined, and sworn to testify and depose the whole truth, and their said depositions were taken down by me, and by the witnesses each and severally subscribed in my presence; that the said deposition was taken before me at my office in the city of Mobile, on Friday the 3rd day of July, 1846, between the hours of 10 o'clock a. m. and 2 o'clock p. m. of said day; that I gave notice in writing to John A. Campbell and Daniel Chandler, attorneys for the libellants, informing them of the time and place for taking these depositions one day before the same were taken, and that they were authorized to attend and to put interrogatories, and that the said attorneys reside in the city of Mobile, and were nearest to the place where the depositions were taken; that Addison Fox, of counsel for the respondents, and John A. Campbell, of counsel for the libellants, were present and cross-examined the said witnesses; all of which I certify under my hand and seal, at Mobile, July 3rd, 1846.

ALEX. McKINSTRY, [SEAL.]

Published by order of the court, July term, 1846.

JOHN FITTS,
Clerk.

Deposition of Edw'd Curtis.

UNITED STATES OF AMERICA,
In the District Court of the Southern District of the State of Alabama, at Mobile.

I, Alexander McKinstry, commissioner of bail and affidavits for the United States court at Mobile, under the appointment of the hon. the circuit court of the United States for the southern district of Alabama, do hereby certify that I called and caused Edward Curtis to come before me at my office in the city of Mobile, on Thursday the 30th day of April, A. D. 1846, between the hours of 10 o'clock a. m. and 4 o'clk p. m. of said day, to testify as to what he knoweth in a certain cause pending in said court, wherein Daniel S. Hickok and George Gazzaway are libellants and the

brig Craton is respondent; and the said witness, Curtis, having been duly examined, cautioned, and sworn by me to testify the truth, the whole truth, and nothing but the truth, and the said Curtis having been examined on behalf of the libellants, deposes and says: That on Thursday, the 19th March, 1845, he was the pilot of the steamboat New World; that on the said day the said steamboat left the port of Mobile, and proceeded down the bay of Mobile, on her way to New Orleans, in the State of Louisiana; that when they had proceeded down the bay about the distance of eighteen miles below the city of Mobile, at about half-past seven o'clock p. m. of said day, the brig Croton came into collision with the said steamboat; that the weather at the time was dark, cloudy, and hazy; that the brig was coming up the bay of Mobile before the wind with her studding sails set; the wind was south-southeast, and she should have been sailing towards the north at the time of the collision; the steamboat was heading south by west, one quarter west, and the brig Croton was heading about west-northwest; that this deponent was in the wheel-house at the time; that he discovered the light from three to four minutes before the collision; that at that time he supposed, from the appearance of the light, that the vessel bearing it was at anchor; that as soon as this deponent discovered the light, he kept the steamboat one point to the west, bringing the light well on the larboard bow of the steamboat; directly after changing the course of the steamboat, this deponent discovered that it was a vessel close aboard of the steamboat on the larboard bow; from the proximity of the vessel to the steamboat there was no way of avoiding the vessel, which could have been done without the least difficulty, but that the vessel was continually steering to the westward; that the light on board the brig was a common signal lantern, forward of the chimneys, immediately under the hurricane deck and the fires on the main deck; that the escape pipe of the steamboat could have been heard by those on board the brig more than five hundred yards; that the captain of said brig Croton, David Soulard, stated to this affiant that he saw a steamboat approaching some ten or fifteen minutes before the collision; that the said brig struck the said steamboat on the forward water wheel beam on the larboard side, carrying away the kitchen, the pantry, the larboard wheel, the guards, and a part of the cabin; destroying the contents of the kitchen, the pantry, and that part of the cabin; carrying away the wheel, and injured the engine very much; that the damages done to the steamboat was about two thousand dollars; that the steamboat was towed up by the steamboat Sea in the same night, and the said steamboat New World remained in Mobile repairing about three weeks; that said collision occurred within the ebb and flow of the tide.

EDWARD CURTIS.

Commissioner's certificate.

And I, Alexander McKinstry, commissioner aforesaid, do further certify, that I am not of counsel or attorney for either of the parties in the said suit, or in anywise interested therein; that the said Edward Curtis was by me duly and carefully cautioned, examined, and sworn to testify and depose the whole truth, and his deposition was taken down by me in writing, and by me read over aloud to him, and by him subscribed in my presence; that the reason for taking the deposition of the said witness is, that he is about to go out of the southern district of the State of Alabama, and to a greater distance from the place of trial of this cause than one hundred miles; that I did not give notice of the taking of this deposition, because there was no claim put in on the behalf of the said brig Croton, and the person who *who* had the agency or possession of the said brig at the time of the seizure of the same was unknown to the libellants, and after making diligent enquiry, I was unable to ascertain; and I further certify, that the said Edward Curtis resides in the city of New Orleans, in the State of Louisiana, more than one hundred miles from the place of the trial of this cause; all of which I certify under my hand and seal, at Mobile, this the thirtieth day of April, A. D. 1846.

ALEX. McKINSTRY, [SEAL.]
Commsr.

Published by order of the court, July term, 1846.
JOHN FITTS, *Clerk.*

Interrogatories to James Irwin.

Interrogatories on the part of the libellants, Daniel S. Hickok and George Gassaway, vs. brig Croton, pending in the district court of the United States for the southern district of Alabama, to be exhibited to James Irwin, a material witness in said case, and who is about to leave the State of Alabama.

1st. Look at the annexed account, marked "A," and state if you know anything of the same; if it correct; and for what the money was paid. State fully and articulately.

2nd. Was or not the said sum of $3,034 11 paid and expended and contracted to be paid and expended for work and labor done in repairing and hausing the steamer New World to the different persons, as stated in said account?

3rd. Has or not this am't paid on account of her collision with the brig Croton, and did or did not the situation and condition of the boat on account of said collision render the expenditure necessary?

CAMPBELL & CHANDLER,
Pro Libellants.

We consent that E. G. Benners, esq., may take the answers of the witnesses to the interrogatories and cross-interrogatories, and that the same may be heard in the trial of the cause, waiving affidavit, commission, &c.

CAMPBELL & CHANDLER,
LINDSAY & FOX.

June 10, '46.

Cross-interrogatories.

1st. Are you interested in this suit or in the steamboat New World?

2nd. Did you make out the annexed account, or did you pay the items? If yea; have you the receipt given? if nay, how do you know the account is correct, or that the moneys were paid?

3rd. Did you see the steamboat New World after she was injured? Are you a competent judge of what repairs were necessary to refit the engines?

4th. Did not the steamboat need some repairs when she started, previous to the collision; and were not those repairs put upon her after the collision, and charged in the annexed account?

5th. Have you the bills of particulars of the separate items of the annexed ac.? If yea, please attach them to your answers.

6th. In answer to the 3rd direct interrogatory, state nothing from hearsay, but only what you know personally.

LINDSAY & FOX,
Proctors for Respondents.

Account.

Steamer New World, repairs, &c., 21 to 5th April, 1846.

For am't paid for clearing wreck		$20 50
"	Martin's bill, canvass, 1 pa	11 10
"	for 3 M tacks	50
"	H. Scott, laborer	6 00
"	Mason, Knight & Wright	18 00
"	L. Wyson	3 00
"	Malon Keyes	60 70
"	G. Robinson	32 00
		151 80
"	D. Torrance	45 00
"	Henry Reed	26 00
"	Alex'r Campbell	48 00
"	Arch'd Fuler	42 50
"	John Winters	32 00
"	Alex'r Sprugen	51 00
"	A. Holt	22 50

"	John Gordon	34 00
"	Noyes & Moore	24 50
"	Listrad & Chamberlain	$60 50
		$537 80
"	Daniel McLeod	63 00
"	J. D. Spear & Co	15 08
"	J. S. Seacor	10 00
"	Scates & Co	478 30
"	David McLeod	631 43
"	H. B. Martin	12 70
"	Jas. Martin	305 50
"	Bussett & Gordon	367 28
"	W. L. Pruwitt	124 50
"	O. Sibley	47 52
"	J. B. Todd	80 00
"	Flathire	11 00
"	S. B. Sea, towing	350 00
		$3,034 11

Testimony of Irwin.

THE STATE OF ALABAMA,
Mobile county.

The deposition of James Irwin, a witness on the part of the libellants, in a certain cause pending in the district court of the United States for the southern district of Alabama, wherein D. S. Hickok and George Gazzaway are libellants against the brig Croton, in answer to the interrogatories and cross-interrogatories hereto attached, said, being first duly sworn, deposes:

Answer to 1st interrogatory: That said annexed account, marked "A," is correct. The money charged in said account was paid for repairs for work and labor done and materials furnished, and to replace articles destroyed, as pr. said account.

This deponent is clerk for William Stewart, and made out the said account.

Answer to 2nd interrogatory: Deponent answers this interrogatory in the affirmative.

Answer to 3rd interrogatory: Deponent answers this interrogatory also in the affirmative.

To the cross-interrogatories witness deposes:

Answer to 1st cross-interrogatory: That he is not interested in this suit or in the steamboat New World.

Answer to 2nd cross-interrrogatory: That he did make out the annexed account. That he paid the items, and that he has in *passion* some of the receipts given.

Answer to 3rd cross-interrogatory: That he did see the steamboat New World after she was injured, and this deponent believes himself a competent judge as to what repairs were necessary. He further states, that after said boat was repaired she was not as valuable by at least one thousand dollars as before the collision with the brig Croton.

Answer to 4th cross-interrogatory: That he cannot say that said boat needed any repairs previous to the collision; that she was in good running condition, and there were no repairs put upon her and charged in the annexed account other than those rendered necessary in consequence of said collision.

Answer to 5th cross-interrogatory: That a portion of the receipts are in his possession in a general receipt book, and also a portion of the accounts; the balance of the vouchers are at present in the hands of Mr. Stewart, (for whom this deponent is transacting business,) in Cincinnati. They can be procured in a reasonable time if desired, but cannot be appended to this deposition for reasons stated in the foregoing part of this answer.

Answer to 6th cross-interrogatory: Deponent states that he was not present at the collision between the brig Croton and the steamer New World, and further saith not.

JAMES IRWIN.

Comm'rs certificate.

THE STATE OF ALABAMA,
Mobile county.

I, Edward G. Benners, hereby certify, that in pursuance of the annexed agreement, entered into by and between Messrs. Campbell & Chandler and Lindsay & Fox, proctors for the parties litigant in a certain cause pending in the district court of the United States for the southern district of Alabama, wherein D. S. Hickok and George Gassaway are libellants against the brig Croton, I caused James Irwin, a witness on the part of the libellants, to appear before me, at my office, in the city of Mobile, in the county and State aforesaid, on the eleventh day of June, A. D. 1846; and having first duly sworn him the truth to say and depose, proceeded to examine him on oath as aforesaid upon the interrogatories, cross-interrogatories hereto attached, and his answers thereto reduced to writing, and did read to him, which he did sign; and I further certify, that the foregoing deposition is the deposition of the said witness made by him in my presence. In witness whereof, I have hereto set my hand and seal, this eleventh day of June, A. D. 1846.

E. G. BENNERS, [SEAL.]
Commissioner by agreement of Counsel.

Published by order of court, July term, 1847.

JOHN FITTS, *Clerk.*

Deposition of H. Knox.

In a certain cause pending in the district court of the United States of America in the southern district of Alabama, at Mobile, wherein Daniel S. Hickok and George Gazzaway, owners of steamboat New World, are plaintiffs, and the brig Croton, of which Soulard is master, and claimed by defendants, I, Henry E. Spencer, mayor of the city of Cincinnati, State of Ohio, at the instance of the plaintiffs in the said suit above entitled, have caused Henry Knox, who resides in Cincinnati, more than one hundred miles from the city of Mobile, to come before me, at the mayor's office, in said city of Cincinnati; and the said Henry Knox having been by me examined, cautioned, and sworn to testify the whole truth, did depose and say, and doth depose and say: I was on board the steamboat New World on the nineteenth day of March, 1846. Said steamboat was then in possession of Daniel S. Hickok and George Gazzaway, in the waters of Mobile bay, about fifteen or twenty miles south of the city of Mobile, then bound and on her voyage for New Orleans. On the Sunday following, to wit, 22d day of March 1846, I was present at a conversation held between George Gazzaway, one of the plaintiffs, and Soulard, captain of the brig Croton, on the wharf, at Mobile. I heard said Soulard say to the said Gazzaway, as near as I can recollect, as follows: "When I first came in sight of the New World with the Croton I supposed she was the 'Factor,' commanded by Captain Foster. Wishing to speak said Factor, putting my helm hard a starboard when very near or just aboard of her—having my starboard tacks aboard—I backed my topsail and made a lee, which rendered my vessel (Croton) unmanageable." Said Soulard also added: "Had it not been for that we should not have come together; that we were both going right; that the least said about the matter the better. As for my part, I intend to look to headquarters for my damages." And further, this deponent sayeth not.

HENRY KNOX.

And I, the said Henry E. Spencer, mayor of said city of Cincinnati, do hereby certify, that I am not of counsel or attorney to either of said parties, or interested in the event of the said cause. I further certify, that the said defendants have no agent or attorney known to me within one hundred miles of Cincinnati, the place of taking the said deposition, nor is the said defendant within one hundred miles of the same place, and no notice of the taking of this testimony has, for that reason, been served on him, and that the said testimony was reduced to writing by me, and by the said witness subscribed in my presence.

In testimony whereof, I have hereunto set my hand and affixed the corporate seal of said city, this 22d day of May, 1846.

H. E. SPENCER, *Mayor*.

Fees for deposition $2 00, paid by plaintiff.

H. E. S.

Published by order of the court, July term, 1846.

JOHN FITTS,
Clerk.

Order.

And afterwards, to wit, on the sixth day of May, in the year of our Lord one thousand eight hundred and forty-six, being a day of a term of said court begun and held in and for said district, at Mobile, on the first Monday of May, in the year of our Lord one thousand eight hundred and forty-six, the following proceedings were had, to wit:

DANIEL S. HICKOK, et al.
vs.
BRIG CROTON.

It is ordered by the court that this cause be continued until the third Monday of July next.

Decree.

And afterwards, to wit, on thirtieth day of July, in the year of our Lord one thousand eight hundred and forty-six, being a day of a term of said court begun and held in and for said district, on the fourth Monday of July, in the year of our Lord one thousand eight hundred and forty-six, the following proceedings were had, to wit:

DANIEL S. HICKOK et al.
vs.
BRIG CROTON.

This day came the parties by their proctors, and this cause coming on to be heard upon libel, claim, answer, and proofs, after argument by proctors, it is thereupon ordered, adjudged, and decreed by the court, that the said libel be dismissed at the cost of the said libellants. Whereupon, the said libellants, in open court, pray an appeal to the next term of the circuit court of the United States for the fifth judicial circuit and southern district of Alabama, which said appeal as prayed is granted, upon the said libellants entering into bond and security in the sum of two hundred dollars, to be approved by the clerk of this court, conditioned for the payment of the costs of the said appellate court.

Bond.

UNITED STATES OF AMERICA,
District Court of the United States
for the Southern District of Alabama.

Know all men by these presents, that we, Daniel Walker, William Stewart, Jas. Bryon, are held and firmly bound unto John Fitts, clerk of the circuit court of the United States for the fifth judicial circuit and southern district of Alabama, in the just and full sum of two hundred dollars lawful money of the United States, for the payment of which, well and truly to be made, we and each of us bind ourselves and each of our heirs, executors, administrators, and assigns jointly and severally firmly by these presents. Sealed with our seals, and dated this thirtieth day of July, A. D. 1846.

The condition of the above obligation is such, that whereas, at a term of the district court of the United States for the southern district of Alabama, begun and held in and for the said district, at Mobile, on the fourth Monday of July, A. D. 1846, a decree was rendered by the court aforesaid against Daniel S. Hickok and George Gazzaway, libellants of the brig Croton, by which decree the libel of the libellants was dismissed at their costs; and whereas the said libellants have prayed an appeal to the next term of the circuit court of the United States for the fifth judicial circuit and southern district of Alabama, which said appeal, as prayed, was granted upon the said libellants entering into bond, &c., in the sum of two hundred dollars: now, therefore, if the said Daniel S. Hickok and George Gazzaway shall well and truly pay to the said John Fitts, clerk as aforesaid, all such costs as may be occasioned by reason of their said appeal, then the foregoing obligation to be void; else to be and remain in full force and virtue.

D. WALKER, [SEAL.]
WILLIAM STEWART, [SEAL.]
By D. WALKER.
JOSEPH BRYAN, [SEAL.]
By D. WALKER.

Filed July 31st, 1846.

JOHN FITTS,
Clerk.

Clerk's certificate.

I, John Fitts, clerk of the district court of the United States for the southern district of Alabama, do hereby certify that the within and beforegoing thirty-three pages and seven lines contain a full, true, and perfect exemplification of the record and proceedings had

in a certain cause lately pending and determined therein, wherein Daniel S. Hickok and George Gazzaway were libellants, and the claimants and owners of the brig Croton were respondents.

In testimony whereof, at office in the city of Mobile, I have hereto set my hand, and affixed the seal of the said court, this [L. S.] twentieth day of August, in the year of our Lord one thousand eight hundred and forty-six.

JOHN FITTS,
Clerk So. Dis. Ala.

Filed (in circuit court) August 20th, 1846.

JOHN FITTS,
Clerk.

Pleas had before the hon. the circuit court of the United States for the fifth judicial circuit and southern district of Alabama, at a term thereof begun and held in and for said district, at Mobile, on the fourth Monday of December, in the year of our Lord one thousand eight hundred and forty-six.

Order of continuance.

And afterwards, to wit, on the 19th day of January, A. D. 1847, being a [day] of the aforesaid term of the said court begun and held as aforesaid, the following proceedings were had:

DANIEL S. HICKOK et al.
vs.
BRIG CROTON.
} 3119.

It is ordered by the court that this cause be continued.

Order of continuance.

And afterwards, to wit, on the 13th day of April, A. D. 1847, being a day of a term of said court begun and held in and for said district, at Mobile, on the second Monday of April, in the year of our Lord one thousand eight hundred and forty-seven, the following proceedings were had:

DANIEL S. HICKOX et al.
vs.
BRIG CROTON.
} 3119.

It is ordered by the court that this cause be continued.

Order of continuance.

And afterwards, to wit, on the 28th day of December, A. D. 1847, being a day of a term of said circuit court begun and held in

and for the said district, at Mobile, on the fourth Monday of December, in the year of our Lord one thousand eight hundred and forty-seven, the following proceedings were had:

DANIEL S. HICKOK et al.
vs.
BRIG CROTON. } 3119.

It is ordered by the court that this cause be continued.

Order of continuance.

And afterwards, to wit, on the 1st day of March, A. D. 1848, being a day of an extra term of said circuit court begun and held in and for said district, at Mobile, on the fourth Monday of February, in the year of our Lord one thousand eight hundred and forty-eight, present his honor John McKinley, presiding judge of said court, the following proceedings were had:

DANIEL S. HICKOK et al.
vs.
BRIG CROTON. } 3119.

It is ordered by the court that this cause be continued.

Order of continuance.

And afterwards, to wit, on the 14th day of April, A. D. 1848, being a day of a term of said circuit court begun and held in and for said district, at Mobile, on the second Monday of April, in the year of our Lord one thousand eight hundred and forty-eight, the following proceedings were had:

DANIEL S. HICKOK et al.
vs.
BRIG CROTON. } 3119.

It is ordered by the court that this cause be continued.

Order of continuance.

And afterwards, to wit, on the 10th day of April, A. D. 1850, being a day of a term of said circuit court begun and held in and for said district, at Mobile, on the second Monday of April, in the year of our Lord one thousand eight hundred and fifty, the following proceedings were had:

DANIEL S. HICKOK et al.
vs.
BRIG CROTON. } 3119.

It is ordered by the court that this cause be continued.

Order of continuance.

And afterwards, to wit, on the twenty-fifth day of May, A. D. 1850, by consent of parties, there issued from the clerk's office of the said circuit court the following commission, to wit:

UNITED STATES OF AMERICA,
Circuit Court of the United States for the Fifth Judicial Circuit and Southern District of Alabama.

Commission.

DANIEL S. HICKOK and GEORGE GAZZAWAY
vs.
BRIG CROTON.

To John M. Jarnagin, George Conway, Rufus Perkins, and W. G. Clarke, Esq'rs:

Know ye, that we, reposing especial trust and confidence in your prudence and fidelity, by these presents do give you full power and authority, or any one of you, to examine Jacob S. Marsh, A. H. Wallace, James Tyler, A. L. Blome, J. D. Spear, Daniel McLeod, George Schefflin, Charles Brewer, Joshua S. Secor, and Henry J. Hawkins, the witnesses for the respondents named in the annexed interrogatories. And therefore we command you that, at such times and places as you shall appoint, you cause the said witnesses to come before you, or any one of you, and after being duly sworn to examine them upon the interrogatories and cross-interrogatories hereto annexed, and that after taking such examination, you do reduce the same into writing, and after having closed up the same under your or either of your hands and seals, you are to return the same into our said court, together with this writ.

Witness the Hon. Roger B. Taney, Chief Justice of the Supreme Court of the United States, this second Monday of April, [L. S.] one thousand eight hundred and fifty, and the seal of said circuit court.

Issued this twenty-fifth day of May, A. D. 1850.

JOHN FITTS,
Clerk C. C. So. Dist. Ala.

Published by order of court, Dec'r term, 1850.

JOHN FITTS, *Clerk.*

HICKOK & GASSAWAY
vs.
BRIG CROTON.
Appeal in the U. S. district court.

Interrogatories.

Interrogatories to Jacob S. Marsh, A. H. Wallace, J. D. Spear,

Daniel McLeod, James Tyler, A. L. Blome, Geo. Schefflin, Chas. Brewer, Henry J. Hawkins, and Joshua S. Secon, witnesses for respondents.

To Daniel McLeod, A. L. Blome, James Tyler, A. H. Wallace, and Jacob S. Marsh:

1st interrogatory. Each of you will please look at the account or bill hereto attached, made out or receipted in your several names, with the receipts thereto attached, and state, each of you, if said ac. and its specification of items is correct, and if said goods, &c., were sold and said work done to or for the brig Croton, its captain or agents, at the date or dates mentioned, and whether you were paid by said brig, her captain or agents.

2d. Was or not said goods, wares, and merchandise sold and said work or services rendered to or for said brig Croton on account or by reason of repairs made necessary or injuries received by said brig from a collision with the steamboat "New World" in the bay of Mobile? Please state as fully as you know.

3d. Please state fully any thing you know that will benefit the defendant in this suit.

To Henry J. Hawkins, Charles Brewer, and George Schefflin:

1st. interrogatory. Please look, each of you, at the several acs. or bills hereto attached, made out in the names of your present or late firms, with the receipts thereto, and state whether said ac's are correct; whether the goods, &c., therein specified were sold and delivered to the brig Croton, her captain or agents, at the dates mentioned therein, and whether or not you were paid by said brig, her captain or agents.

2d. Please state, as fully as you know, whether or not said goods, &c., were rendered necessary for the purpose of repairing and equipment of said brig Croton, after and by reason of her collision with the steamboat "New World" in the bay of Mobile.

3d. Please state all you know that will benefit the defendants in this suit.

To Isaac D. Spear:

1st. Please look on the ac. hereto attached, rendered in the name of I. D. Spear & Co., and state, so far as you know, whether the articles and work therein named were necessary to the proper repairing and equipment of the brig Croton, on account of her collision with the steamboat "New World" in the bay of Mobile.

To Joshua S. Secor:

1st. Please look on the ac. of Capt. D. V. Soulard, and all the other ac. hereto attached, and state whether you know that the work and services therein mentioned, and the goods, materials, &c., therein specified, were rendered and delivered to the brig Croton and her

owners, captain, or agents at the times set forth, and were paid for by said captain or agents.

2d. Do you or not know that said ac's were rendered necessary and proper for said brig by reason and on account of her collision with the steamboat "New World" in the bay of Mobile? If yea, what were your means of knowledge? Were you or not the notary public and adjuster before whom or under whose supervision said work was done and said goods and materials, &c., were ordered or furnished, and did you or not superintend the adjusting of said ac's, &c.?

3d. Was there or not an usual and correct survey made (and by whom) on the repairs, &c., which were rendered necessary to said brig by reason of said collision; and were or not said repairs, &c., when finished, surveyed and examined, (and by whom,) and found reasonable and correct? Was or not all this done with your knowledge and supervision?

4th. State particularly, if you can, all damage sustained by said brig on account of her said collision arising from loss of time, damage, port charges, and work, and labor. Give the specifications of said damages, as near as possible, and state your means of knowing them.

5th. Please state, as fully as if specifically interrogated thereto, all you know or may have heard from the owners or officers of the steamboat "New World" that will benefit the respondents in this suit, by shewing that the brig was not in fault in said collision, and sustained greater damage than the steamboat.

G. F. LINDSAY,
Resp'ts Proctor.

Cross-interrogatories.

1st. Have you any interest in this suit, and will you in any way be the gainer, or to be, let it terminate for or against the libellants?

2d. Do you know that the goods and merchandise were sold and furnished? If so, state when, at whose instance, and on what account. State the particular articles that were so furnished and delivered, and the price of each. Are the charges in the said accounts usual and customary, and do you know the prices of such articles?

3d. Do you know that the work mentioned in said bills was performed? If so, at whose instance and by whose request? Was the work necessary and indispensable? Is the charge usual and customary? Were not more articles furnished and more work done than was necessary or the safety of the brig required?

4th. What was the condition of the brig after she was repaired? Was she well and thoroughly repaired? Were such articles furnished and such work done as were necessary? Did she need any other or further repairs? State fully and particularly.

5th. After the brig was repaired, was she not in as good or even better condition than she was before the accident? State fully.

6th. If you know anything of the loss of time, damage, port charges, &c., state from whence you derived your information. Was the loss of time unavoidable? Who paid the port charges? Give the items of the damages sustained by the brig, and answer only from your knowledge.

7th. If you ever heard the owners of the steamboat New World say anything about the collision, state fully all that was said. The att'ys of the New World object to any answer by the officers of the boat.

8th. State all you know that will benefit the respondents.

CAMPBELL & CHANDLER,
Atto's for Boat, &c.

THE STATE OF ALABAMA,
Mobile county.

By virtue of a commission to me directed from the hon. circuit court of the United States for the southern district of Alabama, I have caused A. L. Blome, one of the witnesses named in the commission, to come before me at my office, in the city of Mobile, on the 9th of December, 1850, for the purpose of taking said witness's testimony; and after being by me duly sworn to speak the truth, the whole truth, and nothing but the truth, touching a certain matter in controversy now pending in said circuit court of U. S. for the southern district of Alabama, wherein Hickok and Gazzaway are complainants and the brig Cotton is respondent, the said witness answers and deposes as follows in reply to the several interrogatories to him propounded:

1st interrog. The bill attached to the commission, purporting to be made by the brig Croton, with I. D. Spear & Co., and receipted in my name, as clerk for I. D. Spear & Co., on 10th April, 1846, is correct in its several specifications. The articles therein specified were sold to the brig Croton at or before the time mentioned, and were paid for by the captain or agents of said brig Croton.

2nd inter. This question I am unable to answer. I know nothing in relation to the subject matter of it.

3rd. I know nothing more than I have already stated in reference to this matter.

A. S. BLOME.

Commissioner's certificate.

I, R. L. Perkins, certify that the above deposition of A. L. Blome was taken at the time and place mentioned in the caption, after the deponent had been duly sworn, and that the said deposition was read over to him and heard *throuought*, and by him fully

approved and signed in my presence, and that the said deposition was not out of my possession until it was sealed up and directed to John Fitts, clerk of the said circuit court of U. S. for the southern district of Alabama.

Given under my hand and seal, on 9th December, 1850.

RUFUS L. PERKINS, [L. S.]
One of the Commissioners.

Testimony of Brewer.

STATE OF ALABAMA,
County of Mobile.

By virtue of a commission to me directed from the hon. circuit court of U. S. A. for the southern district of Alabama, I have caused to come before me, at my office, in the city of Mobile, on Wednesday, 18th Dec., 1850, Charles Brewer, one of the witnesses mentioned in said commission, to take his testimony in relation to a certain matter in controversy now pending before the said circuit court of U. S. for so. dis. of Ala., wherein Hickok and Gazzaway are complainants and the brig Croton is respondent; and the said witness being by me first duly sworn to speak the truth, the whole truth, and nothing but the truth in the premises, answers as follows to the several interrogatories to him propounded, to wit:

1st. The bill or account hereto attached and made in the name of the late firm of Wood & Brewer, of which I was a member, with the receipt thereto attached, is correct. The goods therein specified were sold and delivered to the brig Croton at the dates mentioned in said account, and were paid for by the consignees of said brig.

2nd. Said goods and merchandise were, I recollect, furnished to the brig Croton in consequence of her collision with the steamboat New World, in the bay of Mobile. They were made necessary to her by reason of the collision.

3rd. I know nothing more that will benefit the respondent.

C. BREWER.

Commissioner's certificate.

I, R. L. Perkins, certify that the above deposition of Charles Brewer was taken by me at the time and place mentioned in the caption, after the deponent had been duly sworn, and that the said deposition was read over to him and heard throughout, and by him fully approved and signed, and that the said deposition was not out of my possession until the same was sealed up and directed to John Fitts, clerk of circuit court of the U. S. for the southern district of Alabama.

Given under my hand and seal, on the 18th Dec., 1850.

R. L. PERKINS, [L. S.]
Com'r.

Testimony of Marsh.

STATE OF ALABAMA,
Mobile county.

By virtue of a commission to me directed from the hon. circuit court of the United States for the southern district of Alabama, I have caused Jacob S. Marsh, one of the witnesses named in said commission, to come before me, at my office, in the city of Mobile, on the 17th day of December, 1850, to give his testimony touching a certain matter in controversy now pending in the said circuit court of U. S. for so. dis. of Ala., as aforesaid, wherein Hickok and Gazzaway are complainants and the brig Croton is respondent; and the said witness being by me first duly sworn to speak the truth, the whole truth, and nothing but the truth in the premises, deposes and says as follows in answer to the several interrogatories to him propounded:

1st. The bill hereto and receipted in my name with its specification of items is correct, and the services therein mentioned were performed for the brig Croton at the time mentioned therein, and were paid for by the agents of the vessel.

2nd. The services mentioned in my first answer were performed in consequence of the collision of the steamboat New World and the brig Croton in Mobile bay. However, as to this, I will speak with this qualification, that I did not not see the collision take place, but am perfectly convinced that it did, and that said services were performed and rendered necessary in consequence thereof.

3rd. I know nothing more that will benefit the respondents.

JACOB S. MARSH.

Commissr's certificate.

I, R. L. Perkins, certify that the above deposition of Jacob S. Marsh was taken at the time and place mentioned in the caption, after the said deponent had been duly sworn, and that said deposition was read over to him and heard throughout, and by him fully approved and signed in my presence, and that the said deposition was not out of my possession until it was sealed up and directed to John Fitts, clerk of the said circuit court of the United States for the southern district of Alabama.

Given under my hand and seal, on the 17th December, 1850.

R. L. PERKINS, [L. S.]
Com'r.

Testimony of Schieffelin.

STATE OF ALABAMA,
Mobile county.

By virtue of a commission to me directed from the hon. circuit

court of the United States of America for the southern district of Alabama, I have caused George Schieffelin, one of the witnesses named in said commission, to come before me, at my office, in the city of Mobile, on the 15th day of November, 1850, to give his testimony touching a certain matter in controversy now pending in the said circuit court of the United States for the so. dis. Ala., wherein Hickok & Gazzaway are complainants and the brig Croton is defendant; and the said witness being by me first duly sworn to speak the truth, the whole truth, and nothing but the truth in the premises, deposes and says as follows in answer to the several interrogatories to him propounded, to wit:—

1st. The bill or account attached to the commission, and receipted in the names of Schieffelin & Crozier, with its several items is correct; the articles therein specified were sold to the brig Croton at the date mentioned, and were paid for by Whitaker & Sampson, the agents of the vessel.

2nd. I am convinced that the articles specified in the said account were furnished in consequence of the collision of the brig Croton with the steamboat New World in Mobile bay. I did not witness the collision; but the articles mentioned in the said account were ordered by the port wardens, whose duty it is to order articles for repairs in such cases. At the time the articles were furnished, it was generally understood that there had been recently a collision between the brig Croton and the steamboat New World.

3rd. I know nothing which will benefit either party.

GEO. SCHIEFFELIN.

Commissioner's certificate.

I, R. L. Perkins, certify that the above deposition of George Schieffelin was taken at the time and place mentioned in the caption, after the deponent had been duly sworn, and that said deposition was read over to him and heard throughout, and by him fully approved and signed in my presence, and that the said deposition was not out of my possession until it was sealed up and directed to John Fitts, clerk of the said circuit court of the U. S. for the southern district of Alabama.

Given under my hand and seal, on the 15th Nov., 1850.

R. L. PERKINS, [L. S.]
Com'r.

Testimony of I. D. Spear.

COUNTY OF MOBILE,
State of Alabama.

By virtue of a commission to me directed from the hon. circuit court of the U. S. for southern district of Alabama, I have caused I. D. Spear, one of the witnesses mentioned in said commission,

to come before me, at my office, in the city of Mobile, on the 9th December, 1850, to give his testimoney touching a certain matter in controversy pending in said court, wherein Hickok & Gazzaway are plaintiffs and the brig Croton is defendant; and the said witness being by me first duly sworn to speak the truth, the whole truth, and nothing but the truth in the premises, deposes and says, in answer to the interrogatory to him propounded, as follows:

1st. The articles in the bill hereto attached, and rendered in the name of I. D. Spear & Co., were furnished the brig Croton on account of her collision with the steamboat New World in the bay of Mobile, and were necessary to her proper repairing and equipping in consequence of such collision.

ISAAC D. SPEAR.

Commissioner's Certificate.

I, R. L. Perkins, certify that the above deposition of I. D. Spear was taken at the time and place mentioned in the caption, after the deponent had been duly sworn, and that said deposition was read over to him and heard throughout, and by him fully approved and signed in my presence, and that the said deposition was not out of my possession until it was sealed up and directed to John Fitts, clerk of the hon. circuit court of the United States for the southern district of Alabama.

Given under my hand and seal, 9th Dec., 1850.

R. L. PERKINS, [SEAL.]
Comr.

Testimony of Tyler.

MOBILE COUNTY, *State of Alabama.*

By virtue of a commission to me directed from the hon. circuit court of the United States for the southern district of Alabama, I have caused James Tyler, one of the witnesses mentioned in said commission, to come before me at my office in the city of Mobile, on the 15th Oct., 1850, to give his testimony in relation to a certain matter in controversy now pending in the said court, wherein Hickok and Gazzaway are plaintiffs and the brig Croton is defendant; and the said witness being by me first duly sworn to speak the truth, the whole truth, and nothing but the truth in the premises, deposes and says as follows in answer to the several interrogatories to him *prounded*, to wit:

1st. The bill attached to this commission was made out by me and presented to Captain Soullard, of the brig Croton—that is, the bill signed by my name and made out against the brig Croton and owners for thirty-two dollars. The specification of the bill is correct. It was presented to Captain Soullard on the 10th April, 1846, and at his instance the amount of it was paid to me by Messrs.

Whitaker and Sampson, the consignees of the brig Croton and cargo.

2nd. The specification of service mentioned in the bill above spoken of was done in consequence of the collision of the brig Croton with some other vessel or steamboat. I did not see the collision, but it was universally understood to have taken place with the steamboat New World. Her bow was stove in, and the injury was such that it was indispensably necessary to take her down to the ship yard and haul her up on the ways to be repaired. This collision took place in Mobile bay.

3d. I know nothing more that will benefit the respondent than I have stated.

JAMES TYLER.

Commissioner's certificate.

I. R. L. Perkins, certify that the above deposition of James Tyler was taken at the time and place mentioned in the caption, after the deponent had been duly sworn, and that the said deposition was read over to him and heard throughout, and by him fully approved and signed in my presence, and that the said deposition was not out of my possession until it was sealed up and directed to John Fitts, clerk of the hon. circuit court of the United States for the southern district of Alabama. Given under my hand and seal 15th October, 1850.

R. L. PERKINS, [L. S.]
Comr.

Testimony of Secor.

STATE OF ALABAMA, *Mobile county*

By virtue of a commission to me directed from the hon. circuit court of the United States for the southern district of Alabama, I have caused J. S. Secor, one of the witnesses named in said commission, to come before me at my office, in the city of Mobile, on the 15th Octr., 1850, to give his testimony in relation to a certain matter in controversy now pending before the said circuit court of the U. S. for the southern district of Alabama, wherein Hickok and Gazzaway are plaintiffs and the brig Croton is respondent; and the said witness being by me first duly sworn to speak the truth, the whole truth, and nothing but the truth in the premises, deposes and says, in answer to the several direct interrogatories and cross-interrogatories to him propounded, as follows, to wit:

1st. I answer that the work and services charged and the goods and materials rendered and delivered, as mentioned in the accounts alluded to in the interrogatory, for the brig Croton, of New York, were so furnished and rendered at the time set forth, and have every reason to believe that the same were paid for by the captain of said brig, i. e., Capt. Soullard, or by his agents.

2nd. I do know that said services and materials were rendered necessary to the brig Croton in consequence of her collision with

the steamboat New World in the bay of Mobile. I saw the vessel in her crippled condition when she arrived at the wharf, and was with the surveyors when they examined the extent of her injuries. I also performed all the notarial services necessary in the premises, and examined and adjusted all the vessel's accounts in Mobile.

3d. I know that the usual survey of the brig Croton's injuries, incurred in consequence of said collision, was made by two of the port wardens. The said port wardens recommended what work was necessary to be done in order to place her in her former condition; that when such repairs recommended by them as could be made in Mobile were completed, they again examined said brig and certified their approbation of the repairs, and recommended other repairs to be made on the arrival of the vessel in New York. All this was done with my knowledge and under my supervision.

4th. The brig Croton must have lost twelve days' time in repairing as aforesaid. My opinion is that the damages *was* equal to about forty dollars a day. The wages of the crew in that length of time would amount to about one hundred and twelve dollars, and the provision necessary for them in the same time to sixty-two dollars. There were no additional port charges in consequence of the accident. My knowledge as stated above is the consequence of my constantly having such business with vessels entering this port as would necessarily make me acquainted with such facts.

In addition to the accounts attached to the commission, I know that other expenses have been incurred by the brig Croton, in consequence of her collision with the steamboat New World, in Mobile bay, part of which are referred to in my answer to the fourth interrogatory. These expenses amount to the sum of thirteen hundred and sixty-two $\frac{49}{100}$ dollars, as may be seen by reference to the schedule marked "A," which I annex as a part of my testimony. In said schedule the specific items of disbursement and loss are included. I do not know anything more which *benefit* the respondents in this suit.

J. S. SECOR.

Cross-interrogatories.

Witness answers, in answer to the first cross-interrogatory, I will in no manner be benefited by the issue of this suit, and have [no] interest in it.

2nd. I know that the goods and merchandise were sold and delivered to the brig Croton at the time that she was undergoing repairs in consequence of her collision with the steamboat New World, and that they were furnished at the instance of the capt., Soullard. The articles mentioned in the accounts attached to the commission I know to have been necessary to the brig Croton at the time and under the circumstances immediately subsequent to her collision with the steamboat New World, and have every reason to believe

that they are the specific articles which were furnished. I know the prices of such articles, and that the prices charged are usual and customary.

3d. I do know that the work mentioned in the annexed bills was performed at the instance and by request of the captain, and under recommendations of the surveyors of the vessel. The work done *was* necessary and indispensable, and the charges therefor usual and customary. There were no more articles furnished, and no more work done than was necessary for the seaworthiness of the brig.

She was seaworthy after her repairs in Mobile, but was not in so good a condition as she was prior to her collision with the New World. So far as she was repaired in Mobile the repairs were good. A portion of her repairs could be done better and at lower rates in New York than in Mobile, and for this reason her repairs were not completed in Mobile, but left to be finished on her arrival at New York. Her cut-water and figure-head and other finishing, which were lost by her collision with the New World, were to be completed in New York.

5th. After the repairs to be completed in New York were done, I suppose the brig to have been in as good a condition as prior to her collision; I suppose however, in no better condition.

6th. The loss of time and the amount of damage, and the expenses for the wages and provisions of the crew incurred in consequence of said collision, I know of my own knowledge the loss of time was unavoidable. However, the repairs were made with the greatest expedition, being commenced while the vessel was discharging. There were no extra port charges. The principal damage consisted in loss of bowsprit, jib-booms, head, cut-water, stem, all the rigging connected with the bowsprit, breast-hooks, foresail, fore-topmast-staysail, fore-top-gallant-sail, and royal-sail. The bow of the brig was started, making her leak badly, and she received various other injuries in articles connected with those parts above mentioned as injured.

7th. I have heard the officers of the New World speak about the collision, but remembered nothing particular.

8th. I know nothing that will benefit the respondents.

J. S. SECOR.

I, R. L. Perkins, certify that the above deposition of J. S. Secor was taken by me, at the time and place mentioned in the caption, after the deponent had been duly sworn; and that the said deposition was then read over to him and heard throughout, and by him fully approved and signed in my presence; and that the said deposition was not out of my possession until the same was sealed up and directed to John Fitts, clerk of the said circuit court of the United States for the southern district of Alabama.

Given under my hand and seal, 15th October, 1854.

R. L. PERKINS, *Com'r.* [L. S.]

Schedule "A."

Schedule "A" appended as part of Secor's testimony.

Steamer Factor, paid her for towing brig from Dog River bar to the city		$350 00
James Tyler, paid him for men pumping brig to keep her afloat while the cargo was being discharged		60 00
Captains Mumford and Allen, for survey of vessel		10 00
J. S. Secor, for notarial services, adjusting accounts, &c.		182 00
Whitaker & Sampson, commissioners on disbursements, &c	$100 49	
Paid advertising $5 00; Postages $1	6	
		106 49
Wages of officers and crew while the vessel was repairing, 12 days		112 00
Provisions for same for same period		62 00
Demurrage of vessel 12 days at $40		480 00
		$1362 49

(Accounts, bills, and receipts attached to the commission and referred to in the testimony.)

Soullard's bill.

MOBILE, *April 10th*, 1846.

Brig Croton and owners, to D. V. Soullard, Dr.

For 16 days work of crew in discharging ballast to haul out vessel and taking the same in, at $1 25	$20 00

Rec'd payment,
D. V. SOULLARD.

Brig Croton and owners, to Schieffilin & Crozier, Dr.

To making foresail of pilot duck line plat	$166 47
Fore-topmast-staysail, extra pilot line plat	34 60
Foretop-gals-sail, ravens duck, 1 royal L duck	72 00
Mast lants. 2 pullut clews	10 00
50 yds. jumlin riging and drayage	10 20
	$293 27

Received payment in full,
SCHIEFFILIN & CROZIER.

Mobile, April 9th, 1846.

THE STATE OF ALABAMA,
Mobile county.

Personally appeared before me, Joshua S. Secor, a notary public, in and for said county duly commissioned and sworn, dwelling in the city of Mobile, Geo. Schieffilin, who states on oath that the articles charged in above bill have been furnished the brig Croton, of New York, and that the bill is correct.

GEO. SCHIEFFILIN.

Subscribed and sworn to before me, this 10th day of April, A. D., 1846.

J. S. SECOR.

Hawkins' bill.

MOBILE, *March 30th*, 1846.

The brig Croton and owners, Dr. to Hawkins & Moose.

To 40 lbs. copper spikes, a 50 c	$20 00
" 1 cold chissel *	75
" 2 drift bolts	1 25
" Riviting bands for bowsprit	6 62½
" Repairing and altering 2 screw bolts	3 00
" Dressing 2 cold chissels *	50
" 4 bolts, 17 lbs., at 18 c	3 06
" 7 " 15 " " "	2 70
" 3 " 9 " " "	1 62½
" Shanking auger	75
" 4 bolts,13 lbs. a 18 c	2 34
" 3 ditto,10 " " 18 "	1 80
" 2 key ditto, 8 " " 18 "	1 44
" 4 " " 12 " " 18 "	2 16
" 2 " " 11 " " 18 "	1 98
" 1 " " 8 " " 18 "	1 44
" Dressing bolt and key	50
" 2 bolts, 5 lbs., a 18 c	90
" Making 1 iron handle for punch *	75
" 1 bolt, 4 lbs., a 18 c	75
" 8 lbs. spikes, a 10 c	80
" 1 bolt, 15 lbs., a 18 c	2 70
" Welding auger *	25
" 2 wedges, 6 lbs., a 18 c	1 08
" 17 rings	85
" Cutting and welding auger *	25
" 4 plates and bolts	3 75
" Repairing 2 stanchions	2 50
" 1 hook for chain stopper	1 00
" 6 forlocks	30

" 1 key bolt, 18 a 18	1 44
" Repairing bolt and forlock	50
" 4 rings and forelocks	30
" Staightening gammon iron	2 00
" 1 plate and nails	1 75
" 4 split keys	1 00
	76 04
" 32 nails, 1 60; dressing 4 bolts, $1 00; 1 key and ring, 15 c	2 75
" 6 rings and four locks, 60 c; 1 key bolt for bulls-eye, 75; 2 staples for stem, 50 c	1 85
" 2 key bolts, 6 lbs., a 18 c., $1 08; 1 key bolt, 6 lbs., a 18 c., $1 08; 2 key bolts, 7, a 18, 1 26	3 42
" 1 key bolt, 5 lbs., a 18 c., 90 c.; 1 key bolt, 6 lbs., a 18 c., $1 08; 2 split keys, 50 c	2 48
Cutting and welding auger, 50 c.; 1 link for lobstay, 50 c.	*1 00
	$87 54
Deduct items marked * in margin	3 75
	$83 79

Received payment,
H. J. HAWKINS.

THE STATE OF ALABAMA,
Mobile county.

Personally appeared before me, Joshua S. Secor, a notary republic, in and for said county duly commissioned and sworn, dwelling in the city of Mobile, Henry J. Hawkins, who states on oath, that the articles charged in the above bill have been furnished to brig Croton, of New York, amount eighty-three $\frac{79}{100}$.

H. J. HAWKINS.

Subscribed and sworn to before me, this 8th day of April, A. D. 1846.

J. S. SECOR,
Notary Public.

Wood & Brewer's bill.

MOBILE, 10*th April*, 1856.

Brig Croton and owners bought of Wood & Brewer.

1 bbl. tar, $5; 1 coil spun yarn, 43, a 11, $4 73; 1 coil sieging, 2, a 20, $5 80	$15 53
90 lbs. rope, $9 90; 2 sides leather, $7 00; ½ side pump do, $4 50	21 40

4 kegs white led, $10 00; 10 lbs. tallow, $1 00; 5 galls. paint oil, $6 25	17 25
3 lbs litharge, 75 c.; 2 galls. turpentine, $2 00; 2 paint brushes, $2 00	4 75
10 lbs. verdigris, $5 00; 45 lbs. martim, 20, $9 00; 1 can *croan* yellow, $1 00	15 00
1 side leather, $3 50; 273 lbs. rope, 11, $30 03; 32 lbs. do., 11, $3 52	37 05
48 lbs. sheet lead, $6 00; copper tacks and nails, $1 95; 175 lbs. rope, 11, $19 25	27 20
2 hand spikes, $1 50; 1 pump box, $1 75; 75 lbs. rope, 11, $8 25	11 50
Hooks and thimbles, $1 25; 1 shrive and pin, $1 25.	2 50
440 lbs. rope, 11, $48 40; 3 galls. paint oil, $3 75; 61 lbs. ratlime, 11, $6 71	58 86
1 globe lamp, $3 75; jib haules, $1 50; drayages, $1 50	6 75
	$243 09

Received payment,
WOOD & BREWER, *P. W.*

THE STATE OF ALABAMA,
City and county of Mobile.

Personally appeared before me, Joshua S. Secor, a notary public in and for said county, duly commissioned and sworn, dwelling in the city aforesaid, Edward Wood, who states on oath that the articles charged in the within bill, amounting to hundred and forty-three $\frac{09}{100}$ dollars, have been furnished by Wood & Brewer to brig Croton, of New York.

EDW'D WOOD.

Subscribed and sworn to before me, this 10th day of April, 1846.

J. S. SECOR,
Notary Public.

Marsh's bill.

Brig Croton and owners, to port wardens, Mobile.

1846.	March 24th. To survey of vessel, and repairing ordered to be hauled over	$7 00
	April 6. Survey of repairs ordered and certificate.	10 00
		$17 00

Mobile, Ap'l 1846. Rec'd payment.

JACOB S. MARSH,
Clerk to Board, Master, and Wardens.

Wallace's bill.

MOBILE, *April 10th*, 1846.

Brig Croton and owners, to A. H. Wallace.

For 46 days' work taking down, overhauling, and setting up rigging, a 2 50	$115 00
8 days' work of self a $3 00	24 00
	$139 00

Received payment,

A. H. WALLACE.

Brig Croton and owners, to James Tyler, Dr.

For hauling vessel to ways and back	$32 00

Mobile, April 10th, 1846.

JAMES TYLER.

THE STATE OF ALABAMA,
City and county of Mobile.

Personally appeared before me Joshua S. Seacor, a notary public in and for said county, duly commissioned and sworn, dwelling in the city of Mobile, James Tyler, who states on oath, that the within bill was paid him for hauling vessel to ways and back.

JAMES TYLER.

Subscribed and sworn to before me, this 10th day of April, 1846.

J. S. SECOR,
Notary Public.

I. D. Spear & Co.'s bill.

Brig Croton and owners, to I. D. Spear & Co.

To 86 lbs. of copper bolts, a $5 $53 75; casting for windlass, 188, a 8c, $15 04	$68 79
" drilling and fitting together and putting in straightening heaver, &c	5 00

" making pattern.....	30 00
	$103 79

Mobile, 10th April, 1846.

Received payment,

I. D. SPEIR & CO.,
P'r A. L. BLOME.

THE STATE OF ALABAMA,
Mobile county.

Personally appeared before the undersigned, justice of the peace in and for the county aforesaid, A. L. Blome, who being duly sworn, deposes and says that the items set forth in the above charges are for work done for brig Croton and owners, and that the above sum of one hundred and three $\frac{79}{100}$ dollars is correct as set forth.

A. S. BLOME.

Subscribed and sworn to before before me, April 10th, 1846.

SIDNEY T. DOUGLASS,
J. P.

McLeod's bill.

Brig Croton and owners, to D. McLeod, Dr.

March 23.	To 91¼ days' work of carpenters and caulkers, at $3 75 p'r day.....	$341 25
	" 5 days' work of joiner, $15; live oak stern, $35 00	50 00
	" live oak upper brest-hook, $20 00; do. middle do. $15 00..	35 00
	" Do. lower do.....	10 00
	" 32 feet solid white oak for different purposes, a 75.....	24 00
	" 45 " yellow pine.....	12 00
	" 302 lbs. bolt iron, 10c., $30 20; 13 feet live oak for cat-head $13 00.....	43 20
	" 65 lbs oakum, 10c. $6 50; 1 bbl pitch $14 00; 104 lbs copper bolts, a 40 $41 60.....	52 10
	" drayages to and from yard $5 30; 38 lbs. wrought spikes, 12½, $4 75...	10 05
	" 180 feet white pine, a 5c. $9 00; 300 feet yellow pine boards, $4 50.....	13 50
	" hauling bow out and counching, $105 00; bowsprit $75 00.....	180 00

" jib-boom, $20 00; flying jib-boom, $15 00; fore-top gallant, $17 00...	52 00
" my own services 14 days, at $3 75 a day	52 50
	$876 10
Less allowed on above bill by agreement.....	40 00
	$836 10

Rec'd payment,

D. McLEOD.

THE STATE OF ALABAMA,
Mobile county.

Personally appeared before me, Joshua S. Secor, a notary public, in and for said county, duly commissioned and sworn, dwelling in the city of Mobile, Daniel McLeod, who states on oath that the materials and labor charged in the within bill have been furnished to and performed on the brig Croton, of New York.

D. McLEOD.

Subscribed and sworn to before me, this 7th day of April, 1846.

J. S. SECOR,
Notary Public.

And afterwards, to wit, on the 6th day of January, A. D. 1851, being a day of a term of said circuit court, begun and held in and for said district, at Mobile, on the fourth Monday of December, in the year of our Lord one thousand eight hundred and fifty, the following proceedings were had:

DANIEL S. HICOK et al.
vs.
BRIG CROTON. } 3119.

It is ordered by the court that this cause be continued.

And afterwards, to wit, on the 24th day of April, A. D. 1851, being a day of a term of said circuit court, begun and held in and for said district, at Mobile, on the second day of April, in the year of our Lord one thousand eight hundred and fifty-one, the following proceedings were had:

DANIEL S. HICKOK, et al.
vs.
BRIG CROTON. } 3119.

It is ordered by the court that this cause be continued.

And afterwards, to wit, on the 6th day of January, A. D. 1852, it being a day of a term of said circuit court, begun and held in and for said district, at Mobile, on the fourth Monday of December, in the year of our Lord one thousand eight hundred and fifty-one, the following proceedings were had:

DANIEL S. HICKOK et al.
vs.
BRIG CROTON. } 3119.

It is ordered by the court that this cause be continued.

And afterwards, to wit, on the 23rd day of April, A. D. 1852, being a day of a term of said circuit court, begun and held in and for said district, on the second Monday of April, in the year of our Lord one thousand eight hundred and fifty-two, the following proceedings were had:

DANIEL S. HICKOK et al.
vs.
BRIG CROTON. } 3119.

It is ordered by the court that this cause be continued.

And afterwards, to wit, on the 12th day of January, 1853, being a day of a term of said circuit court, begun and held on the fourth Monday of December, in the year of our Lord one thousand eight hundred and fifty-two, in and for said *said* district, at Mobile, the following proceedings were had:

DANIEL S. HICKOK et al.
vs.
BRIG CROTON. } 3119.

It is ordered by the court that this cause be continued.

And afterwards, to wit, on the 22nd day of August, A. D. 1853, being a day of an adjourned term of the circuit court of the United States for the fifth judicial circuit and southern district of Alabama, begun and held in and for said district, at Mobile, on the fourth Monday of August, in the year of our Lord one thousand eight hundred and fifty-three, for the disposal of appeal and chancery causes, by order of and before his honor, John A. Campbell, presiding judge of said court, the day of holding said term having been postponed from the second Monday of July last, and publication duly made, the following proceedings were had, to wit:—

DANIEL S. HICKOK et al.
vs.
BRIG CROTON. } 3119.

It is ordered by the court that this cause be continued.

And afterwards, to wit, on the 10th day of July, A. D. 1854, being a day of a special term of the circuit court of the United States for the southern district of Alabama, begun and held in and for said district, at Mobile, on the second Monday of July, in the year of our Lord one thousand eight hundred and fifty-four, by order of the Honorable John A. Campbell, judge of the fifth judicial circuit, in pursuance of previous notice, the following proceedings were had, to wit:

DANIEL S. HICKOK et al.
vs.
BRIG CROTON. } 3119.

In this cause the presiding judge of this court having been of counsel for the appellants, and being incompetent to try the same for that reason, it is ordered, upon the application and with the consent of the parties to the same, that this cause be transferred to the circuit court of the United States to be holden at Savannah, in the State of Georgia. And the parties to this cause agree that testimony may be taken upon interrogatories and cross-interrogatories in the usual manner upon commission to be issued by the clerk of this court, and to be returned herein; and that after the cause is thus prepared, that the record with this order shall be transferred to the court aforesaid, to be submitted to the said court upon printed or written arguments, which shall be previously shown to the counsel on either side. It is further agreed that either party may appeal from the decision thus rendered to the Supreme Court of the United States as in other cases, and a bond which shall operate as a supersedeas may be executed with securities resident in Alabama, within sixty days after the rendition of the decree in the circuit court, and that said parties shall have that time within which to complete said appeal.

And afterwards, to wit, on the 29th day of May, A. D. 1855, being a day of a special term of the circuit court of the United States for the southern district of Alabama, begun and held in and for said district, at Mobile, on the 4th Monday of May, A. D. 1855, by order of the Hon. John A. Campbell, judge of the fifth judicial circuit, the following proceedings were had, viz:

DANIEL S. HICKOK et al.
vs.
BRIG CROTON. } 3119.

The order heretofore made in this cause transferring the same to the circuit court of the United States, at Savannah, is hereby rescinded by consent of the parties. Messrs. Chandler, Smith & Herndon, on the part of the libellants; and Messrs. Taylor & Hitchcock, on the part of the respondents, having submitted the cause to

the court, a decree is rendered *pro forma*, the presiding judge having been of counsel for the libellants, affirming the judgment that was rendered in this cause on the 30th day of July, 1846, by the district court, dismissing said libel at the costs of the libellants, from which decree of the court affirming said judgment an appeal is prayed to the next term of the Supreme Court of the United States. The decree rendered in this cause is with the consent of the parties. And it is ordered by the court, that the appellants execute bond and security for the costs of the prosecution of said appeal in the sum of three hundred dollars, within ninety days from the date hereof, to be approved of by the clerk of this court by the consent of the parties.

Appeal bond.

Know all men by these presents, that we, William Stewart and Daniel Walker, are held and firmly bound unto William Thomas Carroll, clerk of the Supreme Court of the United States, in the sum of three hundred dollars, to be paid to the said William Thomas Carroll, his heirs, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 1st day of November, 1855.

Whereas lately, at a term of the circuit court of the United States for the southern district of Alabama, in a suit depending in said court, wherein Daniel S. Hickok and George Gazzaway, owners of the steamboat New World, were libellants, (plaintiffs,) and James Stewart, Jonathan Hillman, Edgar M. Brown, William Layton, and John C. Bayles, claimants of the brig Croton, defendants, judgment was rendered against the said plaintiffs, affirming the judgment of the district court of the United States for the said district dismissing their libel; and the said plaintiffs, having prayed an appeal and obtained an order granting the same, and to remove the said cause to the Supreme Court of the United States to reverse the judgment in the aforesaid suit: now the condition of the above obligation is such, that if the said plaintiffs shall well and truly pay or cause to be paid to the said William Thomas Carroll, his heirs, executors, or administrators, or assigns, all such fees as shall accrue to him as clerk as aforesaid, and chargeable to the said plaintiffs in the prosecution of the said appeal, then the above obligation to be void; otherwise to remain in full force and virtue.

WILLIAM STEWART, [SEAL.]
Per pro., D. WALKER.
D. WALKER, [SEAL.]

Filed Nov. 1, 1855.

GEO. E. HOLT,
Clk.

Power of Attorney.

Know all men by these presents, that I, Wm. Stewart, of Saint Louis, and State of Missouri, have made, constituted, and appointed, and by these presents do make and appoint, Daniel Walker, of the city of Mobile, and State of Alabama, my true and lawful attorney for me and in my name to sign my name to a bond for cost in a suit in case of collision between the steamer New World, in name of D. S. Hickok and G. Gazaway are plaintiffs, and brig Croton are defendants, giving and granting unto my said attorney by these presents full power and authority in and about said premises, and generally to do all other acts in law necessary to carry an appeal of said suit to the Supreme Court of the United States—hereby ratifying and confirming all my said attorney shall lawfully [do] in and about the premises by virtue hereof.

In witness whereof, I have hereunto set my hand and seal, this twenty-fifth day of October, in the year of our Lord one thousand eight hundred and fifty-five.

WM. STEWART, [SEAL.]

STATE OF MISSOURI,
County of St. Louis, ss:

Be it remembered, that on this twenty-fifth day of October, eighteen hundred and fifty-five, before me, the undersigned, clerk of the circuit court within and for the county aforesaid, came William Stewart, who is personally known to me to be the person whose name is subscribed to the foregoing instrument of writing as a party thereto, and he acknowledged the same to be his act and deed for the purposes therein mentioned.

In testimony whereof, I have set my hand and affixed the seal of said court, at office, in the city of St. Louis, the day and year last aforesaid. [SEAL.]

WM. J. HAMMOND, *Cl'k.*

Filed Nov. 1, 1855.

GEO. E. HOLT, *Cl'k.*

Citation.

UNITED STATES OF AMERICA,
Circuit Coart of the United States,
Southern District of Alabama.

The President of the United States, to the marshal of said district, greeting:

Whereas, at a special term of said court, held on the 4th Mon-

day of May, A. D. 1855, in a certain cause in said court, wherein Daniel S. Hickok and George Gazzaway, owners of the steamboat New World, were plaintiffs, and James Stewart, Jonathan Hillman, Edgar M. Brown, William Layton, and John C. Bayles, claimants of the brig Croton, defendants, a judgment was rendered against said plaintiffs, to reverse which the said plaintiffs have applied for and obtained an appeal returnable to the next term of the Supreme Court of the United States, to be held at Washington, on the first Monday of January next:

Now you are hereby commanded, and without delay, to cite the said defendants or their attorneys, Messrs. Taylor & Hitchcock, to appear at the next term of the Supreme Court of the United States to defend against the said appeal if they think proper.

Witness the Hon. Roger B. Taney, Chief Justice of the Supreme Court of the United States, and the seal of said circuit court, the 2 Monday of April, 1855.

Issued November 26th, 1855.

GEO. E. HOLT,
Clerk.

Marshal's return.

Received and executed November 26th, 1855, by serving Messrs. Taylor & Hitchcock with a copy of this citation.

C. M. GODBOLD,
U. S. M.
By WM. H. GASQUE,
D. M.

I, George E. Holt, clerk of the circuit court of the United States for the fifth judicial circuit and southern district of Alabama, do hereby certify that the foregoing seventy-nine pages, numbered from one to seventy-nine inclusively, contain a full, true, and perfect exemplification of the record and proceedings had in a certain cause pending in said court, and lately determined, wherein Daniel S. Hickok et al., owners of the steamboat New World, are plaintiffs, and James Stewart et al., owners of the brig Croton, defendants, as the same are of record, and on file in my office.

In testimony whereof, I have hereto set my hand and affixed the [SEAL.] seal of said court, the 28th day of November, 1855.

GEO. E. HOLT,
Cl'k C. C. So. Dist. Ala.

Writ of certiorari and return.

THE UNITED STATES OF AMERICA, *ss:*

The President of the United States of America, to the judges of the circuit court of the United States for the southern district of Alabama, greeting:

[SEAL.]

Whereas, in a certain suit in said circuit court between Daniel S. Hickok & al., owners of the steamboat New York, libellants, and James Stewart & al., claimants of the brig Croton, respondents, which suit was removed to the Supreme Court of the United States by virtue of an appeal, agreeably to the act of Congress in such case made and provided, a diminution of the record and proceedings of said cause has been suggested, to wit:

"The omission of the testimony of A. H. Jennett, of S. G. Williamson, of J. W. Moore, and of Captain Sheffield:"

You therefore are hereby commanded that, searching the records and proceedings in said cause, you certify what omissions and errors you shall find to the said Supreme Court of the United States, so that you have the same, together with this writ, before the said Supreme Court forthwith.

Witness the Honorable Roger B. Taney, Chief Justice of said Supreme Court, the first Monday of December, A. D. 1857.

WM. THOS. CARROLL,
Clerk Supreme Court U. S.

UNITED STATES OF AMERICA,
Southern District of Alabama.

Circuit Court of the United States in and for the said district.

HICKOK & GAZZAWAY, owners of the steamboat New World,
vs.
THE CLAIMANTS OF THE BRIG CROTON.

Upon an appeal from district court for said district.

Testimony of A. H. Jennitt.

THE STATE OF ALABAMA,
Mobile County.

Before me, a justice of the peace in and for said county, personally came and appeared A. H. Jennitt, who being duly sworn upon oath, says, that on the 11th day of April, 1846, about sundown of said day, he received from James G. Lyon, the marshal of the southern district of Alabama, a deputation authorizing and empowering him to execute a writ of seizure in the case of Daniel S. Hickok and George S. Gassaway against the brig or vessel called the Croton, then lying near Dog River bar, which said writ of seizure issued out of the district court of

the United States at Mobile, claiming damages of $3,500 for running in collision with the steamer "New World;" that about the hour of 8 o'clock, p. m., of the 11th April aforesaid, he left the city of Mobile in pursuit of said brig "Croton," and soon thereafter found her at anchor near Dog River bar; that he executed said writ of seizure by posting upon the mainmast a monition in said case, and reading to the officer in command the writ of seizure; the captain of said brig not being on board at the time; that, as he had been instructed by the said marshal, he placed a trusty man named S. G. Williamson as keeper of said brig until the parties should bond her, leaving instructions with said Williamson not to permit said vessel to be removed until authorized by law, when this deponent left said brig and returned to the city of Mobile; that since his return he has been informed by the said Williamson that soon after deponent left said brig the captain came on board, and ordered the anchor to be weighed and sails set, and soon thereafter informed the said Williamson, who deponent had left in charge of said brig, that he would either carry him to New York or put him on board of one of the pilot boats; the latter he did, and that he, the said Williamson, reached this city not until six o'clock on the next day.

(Signed) A. H. JENNITT.

Sworn to and subscribed before me this 14th day of April, A. D. 1846.

JO. CLEMENTS, *J. P. M. C.*

Testimony of S. G. Williamson.

THE STATE OF ALABAMA,
Mobile County.

Before me, S. T. Douglas, a justice of the peace in and for said county, personally came the said S. G. Williamson, who is mentioned in the foregoing affidavit as having been left in charge of the said brig or vessel called the "Croton," and upon oath says, that, as stated by the said Jennitt, he was placed in charge of the said vessel; that soon thereafter the captain of the brig arrived on board, and was informed that said vessel had been seized, and was in custody and safe-keeping of this affiant. Whereupon the said captain, whose name is Soullard, informed affiant that he intended to sail forthwith to New York in despite of the process which had been served upon said vessel, and that he, deponent, could take his chance of either going to New York or being put on a pilot boat and sent back to Mobile; that accordingly this deponent was forcibly put upon a pilot boat and landed in Mobile the next day about six o'clock, p. m. And this deponent further upon oath says, that situated as he was, it was perfectly out of his power to repel the force of the said captain and his crew in preventing a removal of the vessel.

(Signed) S. G. WILLIAMSON.

Sworn to and subscribed before me, 24th April, 1846.

S. T. DOUGLAS, *J. P.*

Testimony of J. W. Moore.

J. W. Moore, a witness examined on behalf of the libellants, being sworn in open court, said that he understood the rule of navigation to be, that when a steamboat and sailing vessel were approaching one another, that the sailing vessel was entitled to keep her course without alteration, and that it was the duty of the steamboat to alter her course and give way. He further stated, that with the wind prevailing at the time, the sailing vessel (Croton) mentioned in this case might have had her course either to the westward or eastward; that the bay was 12 or 14 miles wide at the place where the collision took place.

Testimony of Sheffield.

Capt. Sheffield, having been examined on behalf of claimants, said that he concurred in the statements made by Capt. Moore, and adding that he had heard the proof, and thought the steamboat ought to have stopped and backed.

We assent to this as the testimony orally given, and consent that it may be made a part of the record in the case of Hickok & Gazzaway vs. Whittaker & Sampson, claimants.

(Signed) J. A. CAMPBELL,
For Libellants.

G. F. LINDSAY,
For Respondents.

I, George E. Holt, clerk of the circuit court of the United States for the fifth judicial circuit and southern district of Alabama, do hereby certify, that the foregoing testimony of A. H. Jennitt, S. G. Williamson, J. W. Moore, and F. Sheffield is truly copied from the original on file in said cause, and omitted in the transcript therein to the Supreme Court of the United ———.

In testimony whereof, at office, in the city of Mobile, I have hereunto set my hand and seal of said circuit court, this fourth day of January, A. D. 1858. [SEAL.]

GEO. E. HOLT,
Cl'k C. C. Sou. Dist. Ala.

UNITED STATES OF AMERICA.

Circuit Court of the United States for the fifth judicial circuit and southern district of Alabama.

I, George E. Holt, clerk of the court aforesaid, do hereby certify, that in obedience to the command of the within writ of certiorari, I have certified, and herewith attach the testimony mentioned as having been omitted in the transcript of the record in the case of Hickok &